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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 233

RUFUS HOWARD NYE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

L. R. Varser,
Ozmer L. Henry,
R. A. McIntyre,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Rufus Howard Nye, respectfully submits this petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit in the above entitled case, decided July 22, 1943.

The Circuit Court of Appeals for the Fourth Circuit has affirmed on appeal a conviction in the District Court of the United States for the Middle District of North Carolina, upon a verdict of guilty of the violation of Section 135 of

the Criminal Code, 18 U. S. C. A. 241, upon the second count in the indictment, which is as follows:

> "That Rufus Howard Nye and Lonnie Cicero Mayers, the defendants herein, on or about April 19, 1939, in the Middle District of North Carolina, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously did corruptly influence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede the due administration of justice in the Court of the United States for the Middle District of North Carolina, that is to say, the said defendants then and there corruptly did endeavor to have dismissed in said Court of the United States a civil action then pending under the number 11 on the Durham docket of the Clerk of the Court for said district, being entitled W. H. Elmore, Administrator of James Elmore, deceased v. C. T. Council and Germain Bernard, partners trading as BC Remedy Company, which said action had not yet come to trial on the merits, that is to say, said defendants did then and there cause to be filed with said Court of the United States false and fraudulently obtained letters and affidavits concerning said action, they the said defendants by such conduct thereby causing delay in the trial of said case and great expense in connection therewith, and did in truth and in fact then and there thereby corruptly influence, obstruct and impede the due administration of justice in said Court of the United States; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

Wherein the petitioner was sentenced to serve a term of six months in prison and to pay a fine of $500.00, and costs.

Statement of the Case.

This is a criminal action begun by indictment in the District Court for the Middle District of North Carolina, wherein there were two counts. The first count charged

your petitioner, R. H. Nye and one, L. C. Mayers with conspiracy to obstruct and impede the due administration of justice in the said court of the United States by preventing the prosecution of a civil action entitled W. H. Elmore, Administrator of James Elmore, deceased, vs. C. T. Council and Germain Bernard, partners, trading as BC Remedy Company, in said court. It was further alleged that the said action was given number 11 on the Durham Docket of the Clerk of the court for said district, and that in said action it was alleged that the death of James Elmore, a son of W. H. Elmore, was caused by the wrongful act of the defendants. This count further specified thirteen overt acts, in substance as follows:

(1) Conferred together on or about March 1939.

(2) That Nye took Mayers and Elmore to his home "Where they spent the night in a room together."

(3) On April 19, 1939, Nye took W. H. Elmore to his attorney where letters were written to District Judge Hayes, of the Middle District of North Carolina, and to William B. Guthrie, Attorney for plaintiff, in said civil action, and prepared for the signature of W. H. Elmore.

(4) That on April 19, 1939, at Lumberton Nye took Elmore to the Clerk of the Superior Court of Robeson County, where final account of Elmore, Administrator of James Elmore, deceased, theretofore prepared by Nye's attorney, was filed, and Nye paid the filing fees.

(5) That on April 19, 1939, at Lumberton, Nye paid postage and registration fees on letters from Elmore to Judge Hayes, and William B. Guthrie, Elmore's attorney.

(6) On April 20, 1939, at Durham, in the Middle District of North Carolina, "and within the jurisdiction of this Court," Nye caused to be delivered to Guthrie, Attorney

for plaintiff Administrator (W. H. Elmore) letter signed by Elmore, Administrator, under the persuasion and domination of Nye, directing dismissal of said suit then pending as Number 11 on the Durham Docket.

(7) On April 22, 1939, at Wilkesboro, in the Middle District, Nye did cause to be delivered to Judge Hayes letter signed by Elmore, Administrator, under the persuasion and domination of Nye requesting the dismissal of said suit Number 11.

(8) On April 24, 1939, in the Middle District, Nye caused to be delivered to Judge Hayes, of said District, letter addressed to Greensboro, and affidavit, concerning the case of Elmore, Administrator against BC Remedy Company, then pending in said court, signed by Albert Elmore.

(9) On May 10, 1939, in said District, Nye did cause to be delivered to Judge Hayes of said District, further letter concerning said suit, signed by Albert Elmore, addressed to Durham, North Carolina.

(10) On May 12, 1939, at Durham, in said District, Nye caused to be presented to the court for signature of Judge Hayes, order dismissing the action entitled Elmore, Administrator of James Elmore, deceased, against BC Remedy Company, "then pending therein."

(11) On July 20, 1939, Nye did appear in the District Court for said District, at Greensboro, before Honorable Johnson J. Hayes, Judge thereof, under his order, and testifying under oath concerning the matter of Elmore, Administrator of BC Remedy Company, and did then and there withhold from the court information which was material that the court should know concerning said matter then pending in said court.

(12) On August 29, 1939, at Greensboro, in said District, said Nye did cause to be filed in the office of the Clerk of

the U. S. District Court for the Middle District of North Carolina, motion to dismiss the said action of Elmore, Administrator of James Elmore, deceased against BC Remedy Company.

(13) From and after April 19, 1939, in said District, that Nye and Mayers did cause to be had in said District Court many hearings in the matter of Elmore, Administrator, against BC Remedy Company, "with great expense attached thereto and delay in the trial of said action."

The jury returned a verdict of not guilty, both as to Nye and Mayers under this first count in the bill of indictment, and guilty as to Nye under the aforesaid second count, and not guilty as to Mayers.

Your petitioner made three contentions in the District Court and in the Circuit Court of Appeals, to-wit:

(1) That the count of the indictment under which the conviction was had was not sufficient, and that your petitioner's demurrer to the bill of indictment ought to have been sustained.

(2) That the District Court erred in denying the defendant's motion for bill of particulars.

(3) That the District Court erred in denying petitioner's motion for a directed verdict of acquittal.

These motions were all denied by the District Court and the cause submitted to a jury resulting in a conviction of this petitioner on the second count, and your petitioner appealed to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the judgment of the District Court on July 22, 1943.

The opinion of the Court was by Parker, Circuit Judge, and Circuit Judges Soper and Dobie agreed.

Questions Presented.

1. IS THE SECOND COUNT IN THE BILL OF INDICTMENT, UNDER WHICH CONVICTION OF THE PETITIONER WAS HAD, SUFFICIENT?

2. IS YOUR PETITIONER ENTITLED TO A BILL OF PARTICULARS?

3. IS YOUR PETITIONER ENTITLED TO A DIRECTED VERDICT OF ACQUITTAL?

Reasons for Allowance of the Writ.

1. The questions presented in this case are of national importance, in that they involved the rights of all defendants indicted under what is known as a general bill of indictment, following 18 U. S. C. A. 241, U. S. Criminal Code, Section 135. The right of a defendant "to be informed of the nature and cause of the accusation" in the indictment and, failing in this motion, he is entitled to a bill of particulars under an indictment in general terms so that he may be informed in respect to the evidence that may be presented against him in a manner that is binding on the prosecution.

These questions present the necessity, or lack of necessity, of alleging in such an indictment that the District Court had jurisdiction of the civil action, in which it is alleged that the obstruction of justice took place. This phase of the first question presents the view that, if the District Court had no jurisdiction of the civil action, then nothing further could be bottomed on it.

2. The decision of the Circuit Court of Appeals is in conflict with other decisions relating to the matters involved herein.

Pettibone v. *United States*, 148 U. S. 197, 37 L. Ed. 419;
United States v. *Hess*, 124 U. S. 486;
Brittain v. *United States*, 108 U. S. 199;

United States v. *Carll*, 105 U. S. 611, 612;
United States v. *Cook*, 84 U. S. 174;
United States v. *Standard Brewery*, 251 U. S. 210;
White v. *United States*, 67 F. (2d), 71 (10th Circuit);
Bass v. *United States*, 25 F. (2d) 294;
Reiner-Gross Co. v. *United States*, 20 F. (2d) 36;
United States v. *Matheus*, 17 F. (2d) 187;
Wishart v. *United States*, 29 F. (2d) 103 (7th Cir.).

The allegations in the second count are wholly general and specify no facts telling the Court wherein the conduct of the defendant contravened the statute under which the indictment was drawn. The indictment does not, in either count, allege the jurisdiction of the District Court in the action of *Elmore, Administrator* v. *BC Remedy Company*, and does not meet the requirement in the *Pettibone* case, *supra*.

Our search fails to disclose that there is any statute, or rule, of the Federal Courts prescribing the form of indictment under 18 U. S. C. A. 241, Criminal Code, Section 135, and the offense denounced in the statute was also an offense at common law, and the Circuit Court of Appeals declined to follow the rule in North Carolina, set forth in *State* v. *Cole*, 202 N. C. 592.

3. In the face of the general character of the bill of indictment, and its failure to set out the facts upon which the crime denounced was based, the court refused the bill of particulars. Your petitioner, therefore, had no binding information as to the particulars of the charges. While the bill of particulars does not aid a defective bill of indictment, it does inform the defendant of what he shall expect to meet in the way of proof at the trial. The decisions in the Fourth Circuit, including the opinion in the instant case, are not in harmony with the opinions in other circuits upon this question.

Your petitioner was denied any information further than the general bill of indictment, when his motion for bill of particulars was denied, leaving this second count as the sole instrument of information to satisfy the rights of your petitioner under the Fifth and Sixth Amendments to the Constitution of the United States.

4. The motion for a directed verdict presents the questions set out in the demurrer to the bill of indictment and includes your petitioner's contention that there was no proof, as well as no allegation, of jurisdiction of the District Court of the civil action of *Elmore, Administrator* v. *BC Remedy Company,* and with the proof that Elmore was a resident of South Carolina when he qualified as Administrator of James Elmore, deceased, in violation of the Consolidated Statutes of North Carolina, Section 8, sub-section 2, which is as follows: "The Clerk shall not issue letters of administration or letters testamentary to any person who, at the time of appearing to qualify— * * * 2. is a non-resident of this state."

Hall v. *Southern Ry. Co.,* 146 N. C. 345, 348;
Estate of Banks, 213 N. C. 382.

It includes also the failure of the bill of indictment to meet the requirements of the Fifth and Sixth Amendments of the Constitution of the United States, for that the bill of indictment is defective in omitting any essential element of the crime when a verdict of not guilty was proper.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding said court to certify and to send to this Court a full and complete transcript of the record and of the proceedings in said Circuit Court of Appeals had in said matter, to the end that this cause may be reviewed and

determined by this Honorable Court, as provided by the statutes of the United States and the rules of this Court, and that the judgment herein of the said Circuit Court of Appeals be reversed by this Honorable Court, and for such other and further relief as to the Court may seem proper.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 233

RUFUS HOWARD NYE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPORTING BRIEF ON PETITION FOR WRIT OF CERTIORARI.

1. The petitioner, Rufus Howard Nye, prays for writ of certiorari to review decision of the Circuit Court of Appeals of the Fourth Circuit, which affirmed a judgment of the District Court, for the Middle District of North Carolina. The opinion of the Circuit Court of Appeals was decided July 22, 1943, not yet officially reported.

2. Jurisdiction of the Supreme Court of the United States is based on, and supported by, the following:

Judicial Code, Section 240, as amended 28 U. S. C. A., Section 347.

3. The judgment of the District Court was on a verdict of guilty on the second count of the indictment, which indictment was drawn under Section 135, U. S. Criminal Code, 18 U. S. C. A. 241. The judgment of the District Court was entered on the 19th day of February 1943, and the opinion and judgment of the Circuit Court of Appeals upon consideration thereof, was decided July 22, 1943.

4. The nature of the case arises out of the second count in the bill of indictment. The bill of indictment attempted to charge in the first count a conspiracy between your petitioner and one, L. C. Mayers, to obstruct the due administration of justice, but there was a general verdict of not guilty as to both your petitioner and Mayers on said count, but there was a verdict of guilty as to your petitioner only on the second count which attempted to charge the substantive offense as denounced in U. S. Criminal Code, Section 135, 18 U. S. C. A. 241. The defendant demurred to the bill of indictment, with the following specifications:

(a) That the indictment fails to state facts sufficient to constitute an offense under U. S. Criminal Code, Section 135, 18 U. S. C. A., Section 241 and that the District Court was without authority, therefore, to proceed.

(b) That the bill of indictment did not set out the facts comprising the alleged charge, nor the manner and means of the commission thereof.

(c) That while the second count stated that your petitioner (with the defendant Mayers) did corruptly endeavor to have the Court of the United States dismiss the civil action on the Durham Docket (which was the action of *W. H. Elmore, Administrator of James Elmore, deceased* v. *BC Remedy Company, a partnership*), and did there cause to be filed within said court false and fraudulently obtained letters concerning said action, without alleging that the defendants knew the letters and affidavits were false, and without specifying the letters and affidavits and the contents thereof, and the names of the authors and the affiants.

(d) In that the bill of indictment did not allege that the District Court of the United States for the Middle District of North Carolina had jurisdiction in the civil action entitled *W. H. Elmore, Administrator of James Elmore, deceased* v. *Council and Bernard, trading as BC Remedy*

Company, and failed to state the facts upon which jurisdiction of said action could be entertained or exercised by the said District Court, and that the bill of indictment did not show upon its face jurisdiction in said court of said action, either as to subject matter or parties.

Your petitioner moved for a bill of particulars, which was denied, and moved for a directed verdict of acquittal, which was also denied. The same grounds for the directed verdict were specified as contained in the demurrer, and that the evidence presented by the Government as to petitioner's statements contain statements that exonerated him, and that the North Carolina law prohibits the appointment of a non-resident as administrator and that when W. H. Elmore was appointed administrator he was a resident of South Carolina, which residence has there continued and that the evidence was not sufficient to support a conviction and these motions were renewed on the same grounds at the close of all the evidence. The petitioner denied the contentions of the Government and contended that he was not guilty and that he had used no persuasion, undue influence or liquor to obtain any statement, letter or affidavit from any of the Elmores and that he was trying to befriend W. H. Elmore at Elmore's request.

5. Cases sustaining the unlimited jurisdiction of the Supreme Court of the United States to review cases determined in the Circuit Court of Appeals:

Warner v. *New Orleans,* 176 U. S. 474;
Title Guaranty & Surety Co. v. *U. S.,* 222 U. S. 401;
Ex Parte Chetwood, 165 U. S. 443;
United States v. *Gulf Refining Co.,* 268 U. S. 452.

6. Specification of errors assigned:

(1) Is the second count in the bill of indictment, under which conviction of the petitioner was had, sufficient?

(2) Is your petitioner entitled to a bill of particulars?

(3) Is your petitioner entitled to a directed verdict of acquittal?

The errors assigned are that the District Court and the Circuit Court of Appeals erroneously held that the second count in the indictment was sufficient and that the defendant was not entitled to a bill of particulars and that there was substantial evidence to support the conviction of your petitioner (the defendant below), on the second count.

7. Statement of Case.

The petitioner (defendant below) says that he was requested by W. H. Elmore, on account of previous friendship, to aid him in getting clear of a suit which he had brought as administrator of James Elmore, deceased, against BC Remedy Company, pending in the Middle District of North Carolina, at Durham, and that he advised Elmore that he knew nothing about these matters and would take him to the lawyer who usually fixed his papers, and that Elmore remained at Nye's home during the night and that Mayers spent the night with Elmore, at Elmore's request, and that next morning Nye took Elmore to Timberlake's office and that Timberlake, the lawyer, advised what was necessary and fixed the papers and the letters, all of which were signed by Elmore, and the final account was filed with the Clerk of the Superior Court of Robeson County, who discharged him as administrator, and the letters were then mailed to Judge Hayes, and Guthrie, Elmore's attorney, at the instance of Elmore, and that the affidavit of Albert Elmore was made because Albert Elmore complained to Nye that W. H. Elmore, Albert's father, had been mistreated and abused by Elmore's attorney because of the matters stated in the letter to Guthrie, and that Albert Elmore gave all the information which was put in the affidavit and that Nye had no ulterior motive and was simply attempting to befriend W. H. Elmore. The Government contended that this was

not true and that Nye was attempting to obstruct the administration of justice thereby.

Argument.

Your petitioner contends that the indictment is not sufficient, is general in its terms, states conclusions instead of facts and does not comply with Constitutional requirements, Amendments Fifth and Sixth to the Federal Constitution, by properly informing him of the facts which are alleged to constitute a crime, and that the Court is unable to determine whether the facts constitute a crime since they are insufficiently pleaded.

Petitioner contends that the jurisdiction of the Federal Court to entertain the suit of *W. H. Elmore, Administrator of James Elmore, deceased,* v. *BC Remedy Company,* was not alleged and is never presumed. Your petitioner says that he was entitled to have in the indictment a statement of the facts constituting the crime charged and that he was entitled to a bill of particulars, then if it was necessary, to have the requested information to prepare his defense, but that whatever may be the rule as to whether a bill of particulars may aid an indictment, there was no bill of particulars ordered in this case. The defendant contends that the evidence was not sufficient to convict; that the Government used statements made by your petitioner and was bound by all of the statements, and that the evidence showed that the appointment of Elmore as administrator was void under the North Carolina law, for that he was a resident of South Carolina when he qualified and that Elmore could not sue in his representative capacity when such representative capacity belonged to a resident only and then obtain jurisdiction in the Federal Court upon nonresidence, which was denied to administrators under the North Carolina statute, and that the evidence was insuf-

ficient to sustain the conviction. The following authorities are relied on:

Pettibone v. *U. S.*, 148 U. S. 197, 37 L. Ed. 419;
State v. *Cole*, 202 N. C. 592;
White v. *U. S.*, 67 F. (2d) 71;
United States v. *Cruikshank*, 92 U. S. 542, 557, 23 L. Ed. 588;
Evans v. *U. S.*, 153 U. S. 584, 587, 38 L. Ed. 830;
United States v. *Hess*, 124 U. S. 483, 486, 31 L. Ed. 516;
1 Arch. Cr. Pr. and Pl., 291;
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Ball v. *U. S.*, 140 U. S. 118, 35 L. Ed. 377;
United States v. *Carll*, 105 U. S. 611, 26 L. Ed. 1135;
Reiner-Gross Co. v. *U. S.*, 20 F. (2d) 36 (6th Cir.);
Bass v. *U. S.*, 25 F. (2d) 294 (5th Cir.);
United States v. *Standard Brewery*, 251 U. S. 210, 64 L. Ed. 229;
Cochran v. *U. S.*, 157 U. S. 285, 39 L. Ed. 704.

Your petitioner, fully cognizant that the granting of writs of certiorari is within the judicial discretion of this Court, submits that the questions involved are of sufficient importance, and that there is no doubt as to the jurisdiction to grant the writ.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 233

RUFUS HOWARD NYE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion in the circuit court of appeals (R. 144–149)[1] is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 22, 1943 (R. 150). The

[1] The reference "R" is to the printed appendix to the brief of appellant filed in the court below and copies of which have been filed with the Clerk of this Court. The references "1 Tr.," "2 Tr.," or "3 Tr." are to the volumes of certified transcript of testimony which have also been filed with the Clerk (R. 151–152).

petition for a writ of certiorari was filed on August 6, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether an indictment charging petitioner with obstructing justice in that he procured the dismissal of a civil action through the filing of "false and fraudulently obtained letters and affidavits" is defective because it failed to specify the letters and affidavits and to allege that the petitioner knew them to be false; or, in the alternative, whether the trial court erred in refusing to compel the prosecutor to furnish a bill of particulars.

2. Whether the Government was required to allege and prove that the court in which the civil action was pending had jurisdiction to try that action.

STATUTE INVOLVED

The pertinent portion of Section 135 of the Criminal Code (Act of March 4, 1909, c. 321 § 135, 35 Stat. 1113, 18 U. S. C. 241) reads:

> Whoever * * * corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

STATEMENT

Petitioner was charged in a two-count indictment (R. 1–6) with (1) unlawful conspiracy corruptly to influence, obstruct, and impede, the due administration of justice, and (2) corruptly influencing, obstructing, and impeding, the due administration of justice in violation of Section 135 of the Criminal Code, 18 U. S. C. 241, *supra.* He was acquitted of the conspiracy charge, found guilty of the substantive offense and sentenced to imprisonment for six months and payment of a fine of $500 (R. 140). Upon appeal the judgment was unanimously affirmed (R. 144–149). The facts founding petitioner's conviction were reviewed by this Court in *Nye* v. *United States,* 313 U. S. 33, 39–40 (see also, 113 F. (2d) 1006, 1007–1008), and need not here be repeated.[3]

[3] In brief, as the court below said, the jury was presented with evidence showing "the pendency of an action for damages brought by one Elmore as administrator, the undue influence by use of liquor and otherwise to over-reach Elmore and take advantage of him, and the obtaining from Elmore by these means of letters and affidavits, which were used in an effort to secure a dismissal of the case and which resulted in delays and obstructions to the due administration of justice" (R. 145; 15–16, 18–24, 69–70, 88–94). Petitioner's interest in the pending civil action resulted from the marriage of his daughter to the son of one of the parties defendant in the civil action (2 Tr. 442, 443, 448). No serious challenge is made to the sufficiency of the evidence supporting the conviction, and therefore we deem it unnecessary to delineate the proof adduced at the trial.

ARGUMENT

I

The circuit court of appeals correctly held (R. 146–147) that since the indictment contains a general charge in the language of the statute which sets forth the essential elements of the offense "with sufficient definiteness and certainty to apprise the defendant of the crime charged and to protect him against further prosecution for the same offense" it is therefore sufficient. Cf. *United States* v. *Lepowitch,* 318 U. S. 702, 704; *Potter* v. *United States,* 155 U. S. 438, 444; *Hagner* v. *United States,* 285 U. S. 427, 431. Accordingly, it was unnecessary for the pleader also to allege the means used, and petitioner's complaint that the indictment is defective because it fails to specify the letters, affidavits and contents thereof, and the names of the authors and affiants (Pet. 12), is meritless. "Such specificity of detail falls rather within the scope of a bill of particulars." *Glasser* v. *United States,* 315 U. S. 60, 66; *United States* v. *Polakoff,* 112 F. (2d) 888, 890 (C. C. A. 2), certiorari denied, 311 U. S. 653. Furthermore, it is settled that only in cases of forgery, counterfeiting and similar offenses is it necessary fully to set forth the documents referred to by the indictment. *Becher* v. *United States,* 5 F. (2d) 45, 49 (C. C. A. 2); *United States* v. *Winslow,* 195 Fed. 578, 582

(D. Mass.); *Pooler* v. *United States,* 127 Fed. 509, 517–518 (C. C. A. 1).[4]

Nor is there any merit in petitioner's claim (Pet. 7–8, 13) that the trial court erred in denying his motion for a bill of particulars (1 Tr. 6–7, R. 10–12). It is well settled, as the court below noted (R. 148), that "the application for the bill of particulars was one addressed to the sound discretion of the court, and, there being no abuse of this discretion, its action thereon should not be disturbed." *Wong Tai* v. *United States,* 273 U. S. 77, 82; see also *Dunlop* v. *United States,* 165 U. S. 486, 491; *Rosen* v. *United States,* 161 U. S. 29, 35, 40; *Bedell* v. *United States,* 78 F. (2d) 358, 362 (C. C. A. 8), certiorari denied, 296 U. S. 628. If petitioner could possibly have been in doubt as to these letters and affidavits in question after the prior proceedings against him (see *Nye* v. *United States,* 313 U. S. 33), such doubt must have been dispelled by the information supplied by a letter of the Assistant United States Attorney responding to petitioner's motion for a bill of particulars (R. 12–14). That letter, which under order of the trial court was attached to the motion for the bill of particulars

[4] Similarly, petitioner's complaint that indictment fails to allege that he knew the letters and affidavits were false (Pet. 12) overlooks the allegation that petitioner "unlawfully, wilfully, knowingly and feloniously, did corruptly influence, obstruct and impede," the administration of justice (R. 6). See *Astwood* v. *United States,* 1 F. (2d) 639, 641–642 (C. C. A. 8), and cases there cited.

and filed as an exhibit (1 Tr. 6–7), identifies the documents in question as those described with great particularity among the overt acts set forth in the first count of the bill of indictment (see R. 3–5), and further designates the documents as the subjects of testimony in the prior contempt proceedings (R. 13–14). It appears that this letter generally supplied the information requested and that petitioner, so regarding it, asked that the letter be filed as an exhibit in order to delimit the area of the Government's proof (1 Tr. 5–7). Certainly petitioner, knowing in advance what proofs the Government would rely on, could not have been prejudiced by the trial court's denial of his motion.[5] And there is nothing in the record indicating that the petitioner was taken by surprise in the progress of the trial, or that his substantial rights were prejudiced in any way by the refusal to require a bill of particulars. *Wong Tai* v. *United States,* 273 U. S. at p. 82.

II

Petitioner also seeks reversal upon the ground that the Government failed to allege or prove that the District Court of the United States for the Middle District of North Carolina had jurisdiction in the civil action the course of which

[5] It has been held that where a bill of particulars "could only have been a repetition of the facts which had already been testified to in the presence of the defendant [at an earlier trial]" the request for the bill was properly denied. *Ciafardini* v. *United States*, 266 Fed. 471, 473–474 (C. C. A. 4), certiorari denied, 254 U. S. 634.

petitioner unlawfully influenced (Pet. 12–13). But as the court below said in disposing of this contention, "This was a prosecution for obstructing justice, not a jurisdictional inquiry nor a prosecution for false pretense. * * * one who corruptly obstructs or impedes the processes of justice may not escape the consequences of his conduct by showing that the court should have declined jurisdiction of the action with which he corruptly interfered." (R. 148, 149). See also *Davey* v. *United States,* 208 Fed. 237, 240 (C. C. A. 7), certiorari denied, 231 U. S. 747; *United States* v. *Perlstein,* 126 F. (24) 789, 796 (C. C. A. 3), certiorari denied, 316 U. S. 678.

Pettibone v. *United States,* 148 U. S. 197, upon which petitioner relies (Pet. 6, 16) furnishes no support for his position. That case turned on defendant's absence of notice or knowledge of the pendency of the federal civil proceeding, a matter specifically alleged by the indictment in the instant case (R. 6), and admitted by petitioner in the course of trial, e. g., R. 75–76, 78–79. More specifically, the evidence here shows that Elmore had been appointed administrator of his son (R. 15), that he instituted the civil action in the federal court in his capacity as administrator (R. 15–16, 3 Tr. 47–48), and that the suit was still pending at the time when petitioner attempted to secure its dismissal by the "highly reprehensible"[6] conduct of which he was convicted (see R.

[6] See *Nye* v. *United States,* 313 U. S. at p. 52.

149, 3 Tr. 72–82). It would seem apparent that petitioner cannot escape liability for his interference with the due administration of justice by the fortuity that the court may have been without jurisdiction over the civil action (see Pet. 8). Petitioner nowhere ascribes to the statute the legislative intent to punish only such persons endeavoring to influence the due administration of justice who might be adversely affected by the outcome of justice's due administration.[7] The statute, referred to as "one of the most important laws ever adopted" is designed to "prevent a miscarriage of Justice by corrupt methods." *Samples* v. *United States,* 121 F. (2d) 263, 265 (C. C. A. 5), certiorari denied, 314 U. S. 662. The civil action which petitioner endeavored to influence might in due course have been dismissed for want of jurisdiction or for want of merit, but Congress

[7] On June 10, 1872, Congress passed "An Act to prevent and punish the Obstruction of the Administration of Justice in the Courts of the United States," 17 Stat. 378. This act became R. S. Section 5404, consolidated with R. S. Section 5399, Act of March 2, 1831, 4 Stat. 488, to form section 135 of the Criminal Code, 35 Stat. 1113, 18 U. S. C. 241. In House debate on the 1872 bill Congressman Peters, steering the bill, stated, "The United States courts have no common law jurisdiction. This bill is intended to confer upon them the same jurisdiction in regard to this offense that other courts have." See *Debates in House of Representatives*, 2nd Sess., 42nd Cong., June 7, 1872, *Congressional Globe*, p. 4319. At common law, indictments to obstruct justice were sustainable despite the fact that no judicial proceeding was pending. *Taylor's and Robinson's Case*, 2 East P. C. 1010, 1 Leach 37. See *United States* v. *Perlstein*, 126 F. (2d) 789, 795–796, note 3 (C. C. A. 3).

did not condition responsibility for intrusion into the orderly determinations of the judicial process upon the nature of the determination. Concededly obstruction "can only arise when justice is being administered," *Pettibone* v. *United States,* 148 U. S. at 207, but it is the very obstruction to the administration of justice which the statute condemns, and nothing in the statute creates a basis for exemption from responsibility for obstruction. "The acts intended to be made criminal * * * are, as we think, not forbidden merely on the ground that such acts will of necessity prevent a fair trial, but on the ground that such acts may prevent such trial," *Wilder* v. *United States,* 143 Fed. 433, 441 (C. C. A. 4), certiorari denied, 204 U. S. 674.

CONCLUSION

The case was correctly decided below, there is no conflict of decisions, and no question of general importance is involved. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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